

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANK J. MARCONE	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	
PHILADELPHIA MARINE TRADE CENTER,	:	No. 98-438
PHILADELPHIA MARINE SERVICES, INC.,	:	
and PETER VANADIA	:	
Defendants.	:	

Green, S.J.

June 22, 1998

MEMORANDUM

Presently pending is Defendant Penn's Landing Marine Trade Center Associates' ("Defendant", referred to by the Plaintiff as "Philadelphia Marine Trade Center") Motion for Remand and/or Dismissal pursuant to 28 U.S.C. § 1447(c) and F.R.C.P. 12(b), and Plaintiff's Response thereto. For the reasons set forth below, the motion will be granted.

Factual and Procedural Background

Plaintiff initiated the underlying suit in the Delaware County Court of Common Pleas which subsequently entered a default judgment against Defendant. The case was transferred to Philadelphia County where, approximately four years later, Defendant filed a petition to open the default judgment. The trial court granted the petition and in February, 1996, the parties entered into a court-approved settlement whereby Plaintiff consented to judgment being entered in favor of Defendants on all claims. Plaintiff, however, reserved the right to appeal the order vacating the default judgment and subsequently did so.

In May, 1997, the Pennsylvania Superior Court quashed Plaintiff's appeal. Plaintiff filed a Petition to Review with the Pennsylvania Supreme Court which was denied in June, 1997. Asserting that this court has original jurisdiction pursuant to 28 U.S.C. § 1331, Plaintiff then filed a Notice of Removal to this court. Plaintiff contends that the Pennsylvania Supreme Court violated his constitutional due process and equal protection rights by denying his request for an appeal.

Discussion

The right to remove a case to federal court is clearly limited to defendants. 28 U.S.C. § 1441. Section 1441 states that "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States" 28 U.S.C. § 1441(a) (emphasis added).

Courts have consistently held that the right of removal from a state court to a federal district court is limited to a defendant or defendants. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 61 S. Ct. 868, (1941); Conner v. Salzinger, 457 F.2d 1241 (3d Cir. 1972). Since the plaintiff is considered master of his own claim and may avoid federal jurisdiction by exclusive reliance on state law, it is considered just and proper to require the plaintiff to abide his choice of forum. Shamrock Oil, 313 U.S. at 106, n. 2, 61 S. Ct. 871, n. 2. See also,

Caterpillar, Inc. v. Williams, 482 U.S. 386, 391, 107 S. Ct. 2425, 2429 (1987).

Moreover, it is well established that a case may not be removed to federal court unless it may have been brought there originally. 28 U.S.C. § 1441(a). See, Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 103 S. Ct. 2841 (1983); Merrill Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 106 S. Ct. 3229 (1986). The propriety of removal of a case from state court is governed by the "well-pleaded" complaint rule. Oklahoma Tax Commission v. Graham, 489 U.S. 838, 840 109 S. Ct. 1519, 1521 (1989). The rule requires that the federal question be presented on the face of plaintiff's properly pled complaint. Id. Therefore, allegations made for the first time in a removal petition cannot support the removal of a case on federal question grounds. Plaintiff made no constitutional due process or equal protection claims in his original complaint, but only asserted state law tort claims for negligence. Consequently, there was no federal question upon which removal can be premised. This purported removal is merely an impermissible attempt by Plaintiff to obtain federal court review of a state court's decision. Accordingly, since Plaintiff's complaint does not, on its face, state a federal claim invoking the jurisdiction of this court, Plaintiff cannot remove this action pursuant to 28 U.S.C. § 1441. This case will be remanded for lack of jurisdiction. An appropriate order follows.

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and PETER VANADIA	:	
Defendants.	:	

ORDER

AND NOW, this day of June, 1998 IT IS HEREBY ORDERED
that Defendant's Motion for Remand is GRANTED. The Clerk of
Court is directed to REMAND this case to the court from which it
was removed.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.